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The Czechoslovak Law On International Transactions†

As early as in the late 1950s the legal community of the Czechoslovak Socialist Republic began preparation of the necessary groundwork for exchange of goods with non-socialist countries, always an important objective of Czechoslovak economic policy. The result was a novel body of law, regulating the relations between institutions and citizens of socialist and capitalist countries.

This legislative work deserves wide attention. It is the first systematic and comprehensive effort to face, in the field of law, the realities of commercial exchanges, not only among the members of the economic community in the Soviet bloc, but also between them and countries with different social and economic systems. Moreover, it is notable for the care and thoroughness and the outstanding scholarship with which it was conceived. Yet, though more than four years have passed since enactment in the Socialist Republic of Czechoslovakia, of the International Trade Code and its satellite laws, the Code has gone almost unnoticed by the legal profession of the non-socialist world.

While a large body of literature exists in the countries of the West dealing with international unification of law and the assimilation of legal systems to each other, very little has been published about similar attempts in socialist countries. Yet, Czechoslovakia has gone far beyond the mere drafting of bilateral or multi-lateral treaties. She has actually enacted a series of laws calculated to achieve, at least as far as Czechoslovakia is concerned, the elimination of that element of uncertainty which exists in the practitioner's mind whenever he is confronted with a problem of substantive or procedural law that cannot be resolved by looking solely to the laws applicable in his country.

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†This article was prepared before the Russian invasion of Czechoslovakia in 1968. *See* Richard M. Goodman, *The Invasion of Czechoslovakia: 1968*, which also appears in this issue.

The purpose of this article is to familiarize the reader with the basic features of this new legal edifice.

Historical Data

When socialism arrived in Czechoslovakia in 1948, the codes then existing were largely based on the civil system inherited from the Austro-Hungarian Monarchy.[1] In the years following 1948, they were replaced by a body of laws adapted to the new socialist realities and generally patterned after the codes of the Soviet Union, with their socialist approach to private property and government monopolization of trade and industry.

By 1960, the Constitution of the Socialist Republic of Czechoslovakia had firmly established the socialist system in the land, and laws regulating the legal relations between individuals and their personal status were enacted in the Civil Code of 1964.[2] The legal relations between socialist organizations, and the mutual rights and obligations between socialist organizations, were codified three months later in the Economic Code of June 1964. Both codes, quite naturally, had specific regard to conditions within the Socialist Republic of Czechoslovakia and to its economic machinery.[3]

Anticipating that these codes would not do when problems arose in the course of international transactions, both within the socialist economic community and with countries of the West, the logical step to fill this void was taken by the enactment of a trilogy of new codes as early as the end of 1963.

The core of the new legal system is the International Trade Code.[4] It is supplemented by an Act concerning International Private Law (the law of conflict of laws) and related Rules and Procedures,[5] and by the Act on International Arbitration and Enforcement of Arbitration Awards.[6]

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[1]KRATOCHVIL, ZDENEK, LA NOUVELLE LÉGISLATION CIVIL DANS LA REPUBLIQUE SOCIALIST TCHECOSLOVAQUE, BULLETIN DE DROIT TCHECOSLOVAQUE, 1 and 2 Sept. 1964; also Dr. L. Kopak, *La Code Tchecoslovaque de Commerce International, Journal de Droit International,* 1967 No. 4.

[2]KOTORA, MIROSLAV, The new Czechoslovak International Trade Code, published in IL DIRITTO SCAMBI INTERNAZIONALI, Milan, Sept. and Dec. 1967; Act. 40 Collection of Czechslovak Laws, 1964.

[3]KOTORA, MIROSLAV, KOPAC, LUDVIK, LANDA, ALOIS, LAWS OF CZECHOSLOVAKIA, Oceania Publications, Dobbs Ferry, N.Y. 1968.

[4]Act 101 Coll. of Laws 1963 (English translation available through Chamber of Commerce of Czechoslovakia in Prague).

[5]Act 97 Coll. of Laws 1963 (English translation available through Chamber of Commerce of Prague) Also Rudolf Bistricky: *The new Czechoslovak Act concerning Private International Law and the Rules and Procedures thereto,* Bulletin of Czech. Law No. 4/1963.

[6]*Id.*

The International Trade Code

The International Trade Code is a code within the true meaning of the term. That is to say, it is a comprehensive and detailed compilation of the entire law on international transactions applicable in the Socialist Republic of Czechoslovakia. Thus it preempts the field, not by simply re-editing existing statutes and case law, but by regulating every aspect of international transactions as conceived by the socialist authors and by furnishing definitions for every conceivable type of contract, as well as for the individuals and legal entities that act in the negotiation, the conclusion and the performance of international transactions. The code has 726 Sections, divided into five Chapters and further divided into a number of Divisions and Parts for easy reference. With the exception of fields of law which are regulated by international treaties or by specific Socialist Czechoslovak legislation, it purports to regulate all the substantive law applicable to international transactions.

However, industrial rights, as patent and trade-mark rights, copyrights, the protection of "know-how" and rights in other intangible property, are not included in the purview of the Trade Code. They are regulated in a new code on industrial-property rights which is in preparation and will replace the existing act on protection of inventions, trade marks and models.[7] Copyrights are governed by the Authors Act of 1965.[8]

Also excluded are international transactions intended to satisfy the personal needs in the territory of the Republic, of at least one of the parties. Such transactions fall into the realm of socialist legislation, and inasmuch as the satisfaction of personal needs of physical persons living in the territory of the Republic is considered the foremost and final goal of socialism, regulation thereof is a prerogative of the sovereign socialist state.[9]

The legislative technique used in the drafting of the Code reflects the endeavor of the legislators to furnish a concise, readable and easily understandable work of law. In its logical construction and its systematic build-up, it follows the traditional technique of the civil-law system, rather than that found in Anglo-Saxon law. Its titles and sections are comfortably short and to the point, the sentences clear and concise.

Its guiding principle is set forth at the head of the Code in its programmatic Section 1: "The purpose of the Act is to adopt a set of complete regulations guiding the property relations arising through international

[7]Acts Nos. 6,7,8 Coll. of Laws, 1952.
[8]Act No. 35 Coll. of Laws, 1965.
[9]KOTORA, MIROSLAV; The new Czechoslovak International Trade Code (see 2.).

trade according to the principle of *full equality* of all parties and participating countries, *regardless of their social and political system,* and thus to contribute to the strengthening of peaceful coexistence and friendship among the nations." The importance of this section is enhanced by Sec. 723 of the Code which provides that the principles stated in Sec. 1 shall be applied whenever rights and obligations cannot be determined in accordance with the literal meaning of the wording used in the Act.

The Limits of Free Agreements

The Code leaves the parties considerable latitude to define their mutual rights and obligations as they please. However, Section 722 enumerates a number of provisions which are mandatory. Among them is a definition of the scope of applicability of the International Trade Code (Sec. 3 and 4). Other mandatory provisions refer to definitions of what constitutes a person, natural and legal, what things and rights may be the objects of legal relations, the nature of legal acts and their nullity or voidability, and what constitutes a condition precedent or subsequent. Also "strictae legis" are the basic rules of agency, powers of attorney, the authority of commercial managers (procuration), the rules on apparent authority, and the revocation of authority and its effect on third parties. Likewise mandatory are the rules on computation of time, the statute of limitations, prescriptions and adverse possession.

The foregoing is not the whole list of mandatory provisions. But their importance to the foreign practitioner is somewhat lessened by Sec. 9 of the companion Act on Conflict of Laws. That section leaves the contracting parties free to choose the law which is to govern their legal relationship. If they choose Czechoslovak law, or if that law would be applicable under the newly codified law of Conflict of Laws by *renvoi,* the International Trade Code remains in effect. It has absolute priority over other Czechoslovak laws, as, for instance, the Economic Code or the Civil Code as long as the particular transaction involves an international element. But if the parties choose a foreign law, the substantive provisions of the chosen law govern.

If the parties do not expressly agree otherwise, the conflict of laws provisions of the foreign law are, however, considered as not included in their choice of laws.[10] But they may covenant that the whole foreign law, including the rules and conflict, is to be applicable. In that case, the International Trade Code may again become applicable by *renvoi.* If no

[10]§ 9 Para. 2 Act No. 97 on International Private Law.

applicable law is expressly chosen, the law whose application is best adapted to the controversy in question shall govern.[11]

The effect of this choice-of-law provision is that the insecurity inherent in negotiations with a foreign partner—in the case of Czechoslovakia the foreign partner will almost always be one of the national enterprises or foreign trade companies representing the interests of whole sections of socialist industry—can be avoided by agreeing on a foreign law that is familiar to both parties. Thus, provided that the foreign parties command enough bargaining power to obtain a choice of law suitable to their interests, the International Trade Code makes that law applicable to controversies, also in courts or before arbitration panels in the Socialist Republic. A serious psychological obstacle to international trade, the worrysome application of unknown socialist law, can thus be avoided effectively.

Sources of the Code

Where the International Trade Code applies, its answers to legal problems in international trade will not substantially differ from solutions which the American lawyer would expect under common or statutory law. This is so because the authors of the new code, in addition to drawing on the experience acquired by generations of Czech and Slovak international merchants and lawyers in dealings between East and West, have carefully examined the results of previous attempts to unify the rules of international exchange of goods and used them wherever acceptable. Thus, some rules and formulations which found entry in the new code come directly from the 1956 Hague Convention draft of a Uniform Law of International Sales, the Egyptian Civil Code of 1948, the Ethiopian Civil Code, the Ghana Sales of Goods Act of 1961, and the Principles of Civil Legislation in the U.S.S.R. as published in 1962. To some extent they also come from the old Russian Civil Code and even older foreign trade laws, among them those of the old Austro-Hungarian Empire. The United States Uniform Commercial Code, too, became one of the sources of the Czechoslovak Code.[12] In its legislative technique, however, the code remains much closer to the traditional European art of codification, and tries not to transfer case law into endless labyrinthine sentences, as is often done in codes or restatements of law in Common Law countries.

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[11]§ 10(1) and (2).

[12]KOPAC, LUDWIG, Introductory remarks to English version of Act. No. 101/63, Chamber of Commerce.

A comparative study in depth of the rules of the code and those applied in the United States governing the international exchange of goods, would far exceed the scope of this article. However, it might be interesting to point out a few important instances in which European concepts require solutions different from those prevailing in this country, and in which the facts of life in socialist and in soft-currency countries call for regulations foreign to the thinking of the average American export merchant or lawyer.

Sales Under the International Trade Code

The field of law which interests us in particular, and in which most international exchanges take place is, of course, that of the sales of goods. It is in this field that the influence of the Hague Convention of 1956 on International Sales, and our Uniform Commercial Code, on the new Czechoslovak legislation is most perceptible, either positively or in a negative way. The Czechoslovak legislator accepts some of our solutions; others he rejects.

There is, for example, the law on formation of contracts for the sale of goods in international trade. As in general, where Civil Law governs, provisions on consideration, actual or implied, are lacking. Neither is there anything comparable to our statutes of fraud. Any clear manifestation of the meeting of minds of the parties, in writing or otherwise, on the essentials of a contractual relationship creates duties and rights which are enforceable. Even conduct without words from which a definite intent can be implied, omission or silence, can be such a manifestation of the will of the parties and constitutes agreement to contract.[13] This is the principle.

There are exceptions in which a written instrument is required. They are expressly stipulated by law, when the writing requirement seems necessary to the legislator to impress on the parties the fact that the intended act is somewhat unusual and may have far reaching consequences. An example, which is of special interest to the American lawyer, is the permissibility of contracts which require the customer to purchase a certain article exclusively from his seller.[14] Or, the seller may impose on the buyer a promise to give him preference over all other sellers.[15] Both types of contract could tend to lessen competition and would, therefore, be of doubtful enforceability under anti-trust laws prevailing in this country. But they are valid under the International Trade Code, if in writing. By con-

[13] § 22, Int. Trade Code.
[14] *Id.*, § 410.
[15] *Id.*, § 415.

trast, a regular exclusive sales contract, in which the seller appoints the buyer as his exclusive distributor or agent, need not be in writing.[16]

The Czechoslovak code also rejects our concepts on rules excluding parole or extrinsic evidence.[17] The admissibility of evidence, and its evaluation, are traditionally left to the discretion of the Czechoslovak courts. The Courts, however, may, and sometimes must, apply rules of interpretation agreed upon in international conventions or growing out of trade practices.[18]

The Czechoslovak code also manifests in several respects an approach different from that of our Uniform Commercial Code as far as responsibility for damages is concerned, when a breach occurs without the fault of either party.

If an event occurs, the non-occurrence of which was a basic assumption of the parties in good faith, our code excuses the party in default.[19] Not so under the International Trade Code. The application of the so-called "clausula rebus sic stantibus" which is, under Civil Law, implied in every contract, is expressly excluded by the code[20] except in cases in which the parties have concluded only a "pactum de contrahendo"—a written agreement to conclude a contract in future.[21]

If goods identified to a contract suffer casualty without the fault of either party, the risk of loss under the Uniform Commercial Code passes to the buyer, and the contract is avoided if the loss is total. Under Czechoslovak law the duty to perform is extinguished also. But there is a but. The seller is obliged to compensate the buyer for damages suffered by the impossibility of performance, unless circumstances of an extraordinary nature, which temporarily or permanently prevent the performance of contractual duties, are "considered" as excluding responsibility. This seems to imply that there exist no objective standards for *force majeure*, and that the avoidance of the contract depends on judicial discretion.[22] But the Section (252 ITC) goes further; it enumerates certain circumstances which do not exclude responsibility. The most important such circumstance is the failure of the obligor to procure an official license which is required in most cases in which a country with a controlled economy or currency is involved. The International Trade Code considers such a license "an obstacle which the

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[16]*Id.*, §§405, 410, 418.

[17]*See* UCC § 2-202.

[18]§ 116, 117, 118 Int. Trade Code; See also rules of construction under INCOTERMS (International commercial terms prepared by Intern. Chamber of Commerce Paris).

[19]Excuse by failure of presupposed conditions, 2-615 UCC.

[20]§ 275 Intern. Trade Code, see also Sect. 251 et sequ.

[21]*Id.*, 122.

[22]*Id.*, § 252, 258(3).

obligor was bound to overcome." If he does not overcome it, he is not excused.[23]

Here we have a solution quite different from the one under the Uniform Code and our concepts of equity. If foreign or domestic government regulations hinder performance wholly, the obligor is free of his contractual duties; if partially, he must make appropriate allocations among his customers (Sec. 2-615 UCC). In Czechoslovakia, he owes damages.

Our government has frequently restricted the international exchange of goods by introduction of licensing and export quotas. This can happen again. The redeeming feature of the Czechoslovak approach to this question is, however, that the Sections just discussed can be changed by agreement.[24]

Chapter IV, Part II, of the International Trade Code regulates a number of special clauses in sales contracts. Only those touching on problems which may actually arise in dealings with the Republic of Czechoslovakia are discussed hereunder.

If there exists an exclusive sales agreement which forbids the re-export of goods by the exclusive representative or distributor to a foreign buyer, the exclusive distributor or representative is liable for damages arising from re-export, apparently without regard to any bad faith on his part. In other words, if he sells to a customer who resells the goods to a foreign buyer, this is a violation irrespective of whether the agent knows of it or not. Moreover, the exclusive distributor or agent is saddled, upon request of the seller, with the often impossible proof of a negative—namely, that the goods have not been re-exported by anyone.[25]

Agreements on restrictions to certain territories and selected customers are enforceable when in writing. The code has at heart the protection of buyers in under-developed countries who buy primarily for their own use and not for resale. They need protection from the competition of additional, but unwelcome, customers who may establish competitive businesses in the under-developed territory, threatening the existence of a fledgling industry.[26] Whether such a restrictive clause in a contract for sale, or any one of several other restrictive covenants protected by the Code, would stand up under anti-trust law is more than questionable.

Clauses guaranteeing the value of the currency in which a sale was made, or protecting the relation of gold to the contract currency, have often

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[23] *Id.*, § 252(2).
[24] *Id.*, § 722(1).
[25] §§ 395, 396 Int. Trade Code.
[26] *Id.*, §§ 398, 399.

been declared invalid in the past in countries with galloping inflation. The code declares such clauses not only admissible, but regulates them in the event that a contract does not contain the usual price-currency protective clause.[27] None of the above-discussed special clauses is "stricti juris"; they can be modified by the parties.

Interdependent Contracts

Socialist economies and other planned economies, as well as countries with soft currencies, rely heavily, in international exchanges, on clearing arrangements, multiple or unilateral barter transactions, and so-called compensation deals. Settlements through the delivery of goods and credits, and through charges on interstate clearing accounts, take the place of monetary remittances.

The Uniform Commercial Code treats such transactions, in which no money changes hands, in one short sentence, declaring that each party is a seller of the goods he is to transfer.[28] The International Trade Code dedicates a separate Part of five Sections to this type of transaction which ties more than two performances and more than two parties into a single transaction, or into a series of transactions.[29]

Section 419 gives a general definition of interlocking contracts. When the parties know "particularly in view of interstate payment relations" that the performance of one contract is a condition for the performance of the other, the non-performance of one has the effect of avoidance of the other. The law does not deal with the effects of non-performance in terms of damages. This is probably so because it considers that performance will in general only fail if interstate clearing accounts lack the funds for seasonable settlement, an obstacle beyond the control of the parties. The obligor will have a full excuse under Section 252 ITC. That at least must be assumed until the question is tested in court.

The next Section (420) discusses multilateral barter transactions, also known as multilateral compensation deals. In these cases goods move between two or three foreign markets, despite the absence of a clearing agreement and despite the fact that currency restrictions forbid remittance of direct payments to foreign countries. For example—a mining concern A in country X ships ore to steelmaker B in country Y. Steelmaker B in country Y ships steel to pipemaker C in country X. A and C, domiciled in the same country, can now settle in money. The deal becomes more

[27] *Id.*, §§ 403, 404.
[28] § 2-304(1) UCC.
[29] § 419 to 424 Intern. Trade Code.

complicated if the pipemaker has his domicile in country Z. He must find a commodity for which there is a market in country X to complete the multilateral compensation deal.

In general, the law on all these transactions follows the law of contracts of sale. But as all the deliveries are promised to the recipient for the benefit of another party, the law on third-party beneficiaries enters the picture and complicates it, especially if one of the parties defaults on the contract.

This makes necessary, certain deviations of the generally applicable law on sales: If one party has performed, the others may not repudiate their obligation under any circumstances, except that one of them compensates the performing party for its damages. Or, if a party does not receive perfect goods, the injured party may ask for compensation, but not, as in regular sales transactions, for a price reduction.

Particularly interesting are Sections 422 and 423. If a supplier in country X does not deliver or delays delivery, his compensation-partner in country Y must not delay or stop performance of his part of the deal to the third party only because this third party lives in the same country as the defaulting party (Sec. 422).

Moreover, partners to a multilateral transaction who live in the same country are jointly and severally liable for the performance of the obligations to the partners whose domicile is in a foreign country. Family wash has to be done at home, so to say. Such liability *ex lege* has hardly a counterpart in a free market economy, and can be explained only by the role of governments in planned economy nations.

Other General Provisions of the Code

As mentioned before, the International Trade Code purports to be a comprehensive regulation of all conceivable institutions and property relations that may become elements of international agreements. Chapter IV – the longest of the code in twenty-six parts and four hundred forty-four sections – defines a long list of specific types of contracts, and explains their effect on the parties. The list begins with sales, explains bailments, loans, warehousing, carriage-of-goods contracts, ships' charters, agency and brokerage agreements, and banking transactions. Among the latter, the code deals with all kinds of letters of credit and with travellers checks, as distinguished from other checks and bills of exchange, which are regulated in a separate statute.[30]

[30]Act No. 90 Coll. of Laws, 1963.

The code also deals with international trade usage, and its place in international transactions with respect to statutory law; it regulates public tenders, acts in excess of authority, the law on apparent authority, "negotiorum gestio," unjust enrichment, the distribution of damages arising from sacrifices in the course of salvage operations, especially on the high seas (general average). The chapter ends with a regulation of the consequences of the breach of extra-contractual duties, and with a somewhat arcane provision establishing vicarious liability of an obligor for his servants for a breach of obligations "not governed by this act." This obviously means nothing more than the liability of the principal for acts and omissions of his agents, including torts committed in performance of contractual duties.[31]

These are the highlights of the code. Its last Chapter, V, makes the code applicable to arbitration proceedings and, once again, refers in a rule of interpretation to the principle stated in Section 1, namely, the full equality in court before the law of both the socialist and the capitalist legal systems. To provide for possible gaps in the law, Section 723 stipulates that all interpretations be in strict keeping with the main purpose of the Act: to be the rule of law governing peaceful intercourse among nations without discrimination between political and economic systems.

The Law of Conflict of Laws

Hardly another branch of law has seen so many attempts at unification on an international level as the law on Conflict of Laws, to which reference is ordinarily made in continental parlance as Private International Law. In this country, a preliminary result of decades of debate is the Restatement of the Law on Conflict of Laws (One and Two) no part of which has, however, been enacted into law anywhere in the United States. In contrast, Czechoslovakia was the first country which—as early as 1948—enacted a code distilling old and modern theories into a statute that would guide the judiciary through the labyrinth of this often confusing discipline.[32]

When this Act was adopted by the Czechoslovak legislature, private enterprise still played an important role in the national economy. Substantive law was still largely based on the concepts of the Austrian Civil Codes; state monopoly of industry and commerce was yet to come. When the new socialist Constitution of 1960 made the adaptation of existing law

[31] § 720 Intern. Trade Code.
[32] Act No. 41 on International Private Law, 1948.

to the new social order desirable, a new statute on Conflict of Laws was enacted as a companion law to the International Trade Code.[33]

The purpose of the Act is stated in its first Section: to determine which law shall govern in controversies arising from international transactions, whether the questions to be answered involve private legal relationships or personal status, capacity to act, family relations, labor problems, or procedural law. The purpose is again stated expressly as being the promotion of international cooperation. International treaties take precedence over the Act.

The importance of the Act is stressed by Section 3 of the International Trade Code. That code is applicable only if Czechoslovakian law is to be applied to the solution of a controversy. But questions on whether and when Czech law shall be applicable to the solution of problems with international elements are answered by this "act concerning private international law and the rules of related procedure."

Here, as in the International Trade Code, the obvious endeavor of the authors was to do away with the uncertainties brought about by different rules depending upon where a controversy finds a forum. They were also well aware of the impact which new doctrines, such as the "center-of-gravity" or the "grouping-of-interest" theories, have made on other jurisdictions. Their endeavor was to offer an escape in black-letter law from the uncertainties of various modern concepts of old theories.

As a stabilizing factor, the principle is introduced into the Act that, unless something else is expressly provided, the validity of each legal act, as well as the consequences of its invalidity, shall be governed by the same laws as deal with the effects of such statutes.[34] If, for instance, the validity of a contract is to be adjudged under the law of country X, the obligations arising from the same contract must be evaluated by the same law. The Act does not mention torts, but it is to be assumed that the same law is to be applied when a breach of a contractual obligation sounds in tort rather than in contract. Thus, claims in interstate transportation, sounding in tort, should follow the rules applicable to contracts with the carriers.

Section 10 of the Act enumerates seven types of contracts (a-g) with the law applicable thereto: Contracts of sale are based on the law of the domicile of the seller at the time of agreement; contracts for transportation, insurance contracts, commission, agency and brokerage contracts follow the law of the principal place of business of the carrier, the insurer, or the

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[33]Act No. 97, Coll. of Laws of Dec. 4, 1963, concerning Private International Law and the Rules and Procedures thereto.

[34]*Id.*, § 4.

agent at the time of the conclusion of the contract; contracts respecting real property follow the *"lex rei sitae";* multilateral barter transactions, however, are governed by the law whose application "best corresponds to the settlement of the mutual obligations" as a whole. Here, full discretion of the court is the rule of law.

In a catchall paragraph, Section 10 states that other, not enumerated, contracts shall "as a rule" be governed by the law of the State in which both parties have their domicile; if the domicile is in different states, by the *lex loci contractus* if both parties were present at the act of conclusion and, where the parties were not present, by the law of the State of the party which accepted the offer of contract.[35]

A special provision, patterned after the Hague Draft Convention of 1956 on the transfer of chattels, calls for the application of the *lex rei sitae* to the questions of transfer of title and its consequences, transfer of risk of loss, and security arrangements.[36]

The Act follows traditional patterns in the fields of labor law, the law of succession, domestic relations, and the status of aliens.

Free Choice of Law and *Renvoi*

Like the International Trade Code, the Code on Conflict of Laws affords the greatest possible latitude to the decision of the parties.[37] They may choose the law that will govern their mutual relations except, of course, in cases in which questions beyond their discretion, such as personal status, citizenship, etc., are concerned.

The choice of law requires no particular form; it can even be expressed by implication. However, in the absence of express agreement to the contrary, all the foreign law, but not its provisions on conflict of laws, shall be considered the chosen law. This express provision is aimed at cutting short the possibility of endless reference from one law to the other, known as *renvoi,* which sometimes plagues the jurist and contributes to the uncertainties in the search for an applicable law in international litigation. However, in the discretion of the court, and if this is in keeping with a reasonable and just solution, *renvoi* may be resorted to, unless expressly excluded by the parties.[38]

As a matter of course, foreign law running afoul of the public order of the Czechoslovak Socialist Republic will not be enforced. However, this

[35] *Id.*, § 10.
[36] *Id.*, § 12.
[37] *Id.*, § 9.
[38] *Id.*, §§ 9 and 35.

provision does not affect transactions involving private property relations, as it is the expressly-stated policy of the Act to treat socialist and capitalist concepts concerning the exchange of goods in international commerce on an even basis.

Procedural Provisions

The balance of the Act concerns itself with procedural provisions: Jurisdiction, reciprocity in enforcement proceedings, security deposits of the foreign plaintiff, exequatur, personal advice, legal assistance to foreign courts, etc. These provisions deviate from the patterns traditional in other countries.[39]

Under a special heading, reference is made to federal States with multiple legal areas, such as the United States, Canada, the British Commonwealth, etc.[40]

If the court does not know the content of applicable foreign law, it will explore it *ex officio*. Thus, foreign law is not a fact to be alleged and proved by the parties. *Jura novit curia*.[41]

All in all, the new Act on international conflict of laws seems to be a highly progressive and valuable tool which, if it does not solve all conceivable problems that may arise from the complications of contemporary international exchanges, will go a long way toward a uniform rule of law in interstate transactions, making "forum shopping" and other devices which increase the uncertainties of international litigation a thing of the past. The Act may well stimulate the Western world to expedite the age-old attempts at arriving at uniform rules and procedures in the important field of international conflict of laws.

The Act Relating to Arbitration in International Trade, and to Enforcement of Arbitration Awards

With this Code[42] the Czechoslovak legislator completes his task of creating a viable system of laws which will instill confidence into foreign merchants, be they government organizations in socialist countries, enterprises in developing nations with planned economies, or businessmen in capitalist countries with a free market economy.

It is a matter of prime concern for counsel of an enterprise in a capitalist country to know what fate just claims arising out of contracts with socialist

[39]Part II, International Procedures, §§ 37 to 70 Act. No. 97/63.

[40]*Id.*, § 34.

[41]*Id.*, § 53.

[42]Act No. 98 of December 4, 1963 on Arbitration and Enforcement of Arbitration awards.

enterprises will have, once a controversy arises and can be solved only by litigation. Will proceedings be blocked for years by clogged calendars, as in this country? Will an award be enforceable without bias? Will the costs be forbidding? Will independent legal talent for the representation of a foreign claim before socialist courts be available? Will trade usages and methods of dealing have their proper place in foreign procedures? Will the panel deciding the case be composed of judges with experience in international trade? All these questions lose much of their point when recourse can be had to reliable international arbitration, whose awards can be enforced in the country in which the judgment debtor has his domicile.

The Czechoslovak Act on arbitration opens the road to just such a comparatively safe and viable procedure.

Differences respecting property rights which arise from international transactions, which would otherwise fall under the jurisdiction of courts, may be submitted to an arbitrator or a panel of arbitrators.[43]

Thus, only justiciable controversies with a foreign element may be submitted to arbitration. This limitation is largely absent from law in the United States. It would, e.g., exclude labor disputes from arbitration.

The agreement or the arbitration clause may, as in this country, cover existing controversies or future disputes arising out of a stated legal relationship.[44]

An arbitration agreement or an arbitration clause must be in writing, but correspondence, teletype messages, cables, or confirmations of oral agreements, constitute such writings.[45] The arbitration clause—or the arbitration agreement—is separable from the principal contract. The invalidity of the latter does not necessarily affect the enforcement of the arbitration agreement.[46]

Anybody who has the capacity to act under the law of the nation of which he is a citizen, or under Czechoslovak law, may act as an arbitrator.

Unless the number of arbitrators is stipulated, the panel is to consist of one arbitrator chosen by each party; and these arbitrators elect a third one as their chairman. Failing agreement, the courts will appoint the arbitrators.[47]

While, in general, the Act follows principles similar to our Uniform Arbitration Act and the New York Convention on Arbitration of 1958, which the United States Senate recently ratified and of which Czechoslovakia is a signatory, there are differences in the Czechoslovak law that merit mentioning.

[43] *Id.*, § 2.
[44] *Id.*, § 3.
[45] *Id.*, § 4(1).
[46] *Id.*, § 4(2).
[47] *Id.*, § 5.

The arbitrators and their attorneys lack the power to issue subpoenas or to administer oaths. If evidence is not presented voluntarily and seems indispensable according to the allegations of the parties, the arbitrators, not the parties, have the right to demand that depositions be taken by the competent court which would have had jurisdiction but for the arbitration agreement.[48]

The award must be rendered in writing and must state the grounds on which it is based, unless the parties waive this rule. While an award under our rules of procedure need not state grounds and cannot be vacated for errors other than errors of procedure, unless otherwise expressly agreed upon by the parties, the Czechoslovak law requires that the arbitrators abide by the substantive law governing the relations of the parties, be it Czechoslovak or a foreign law chosen by the parties.[49]

Appeals to the arbitration panel itself, or to a second panel constituted for this purpose, are admissible if called for in the arbitration agreement.[50]

The parties have wide latitude in selecting Czechoslovak or foreign arbitration panels, including permanent arbitration courts in Czechoslovakia or abroad. The rules and regulations of such permanent courts take precedence over Czechoslovak law, provided that the parties are not deprived of their right to demand annulment, or stay of proceedings or execution before the competent courts.[51]

Enforceability of Foreign Arbitral Awards

The great value of the Act in respect to international transactions lies in its provisions concerning relations with foreign countries.

Awards rendered in a foreign country will be granted recognition and enforceability in Czechoslovakia without the need for exequatur or other process, if there is reciprocity of treatment. No special treaties to this effect are required, as long as the respective foreign country grants reciprocity. In this case, an award is treated like a domestic judgment.[52]

Czechoslovakia has signed the Geneva Protocol on Arbitration Clauses and Submission of September 24, 1923; the Geneva Convention on the Execution of Foreign Arbitral Awards of September 26, 1927; the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958; and the Geneva Protocol; an equal number

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[48] *Id.*, §§ 10(2) and (3).
[49] *Id.*, § 14.
[50] *Id.*, § 17.
[51] *Id.*, § 28.
[52] *Id.*, § 29 et seq.

subscribe to the Geneva Convention; about thirty have ratified the New York Convention; and seven support the European Convention of 1961. Any arbitral award made in any of the countries which are members of these Conventions is enforceable in Czechoslovakia under the Act of 1963.

Conclusion

From the viewpoint of a free-market economy, it is obvious that an International Trade Code enacted in a socialist country with the specific object of regulating substantive mercantile law in full recognition of the needs of a non-socialist economy, and in full awareness of the fact that the legal institutions and tools of both social systems must be granted undisputed equality, is a remarkable step in the right direction. The pioneering codification of the international law of Conflict of Laws, with its farsighted permissiveness, is a further important step toward the removal of the uncertainties which often overshadow contract negotiations between merchants of different social systems.

Further, the law on arbitral awards assures the foreign merchant that he will not only have a forum of his choice for the adjudication of his rights, but also that the award can be enforced in all countries which have ratified an international convention for the enforcement of such awards. Czechoslovakia is a signatory of the New York Convention of 1958 which, after the recent ratification by the United States Senate, only awaits the signature of the President in order to become the law of the land.

In the meantime, and later on when an American merchant does not have sufficient bargaining power to obtain an arbitration agreement calling for an American panel, submission of controversies to one of the several permanent arbitration courts in the numerous nations which, like Czechoslovakia, are signatories of one of the existing multilateral treaties, will assure speedy enforcement of awards with fewer formal requirements than are faced by an American attorney in the enforcement of judgments rendered by foreign courts or by courts of a sister state within this country.

The combined effect of the Czechoslovak International Trade Code, the Act on International Private Law and the Enforceability of International Arbitral Awards in Czechoslovakia, will doubtlessly serve as a strong encouragement to explore new potentials for trade between the Czechoslovak Republic and the United States, and will hopefully lead to a substantial intensification of commercial contacts, so desirable in the interests of international exchanges between nations, without regard to their social and economic systems.